GOVERNMNET OF ANDHRA PRADESH

ABSTRACT

Water Resources Department – Dr.K.L.Rao Sagar Pulichintala Project - Sanction for an amount of Rs.199,67,12,165/- (Rupees One Ninety Nine Crore Sixty Seven Lakh Twelve Thousand One hundred and Sixty Five only) i.e., 50% of Arbitral amount along with interest accrued as on 23.11.2018 on the file of the A.O.P. No.23 of 2015 Principal District Court Krishna, Machilipatnam in accordance to the Hon'ble High Court Orders in IA No.2 of 2018 in CMA No.1141/2018, dated:23.11.2018 and also permit the Executive Engineer, Pulichintala Project Division No.2, Jaggaiahpet to deposit the 50% of Arbitral amount in the Hon'ble Court - Orders - Issued.

WATER RESOURCES (Projects-II) DEPARTMENT

G.O.MS.No. 6 **Dated: 18-01-2019**

Read the following:

1. Govt.,Memo.No.20548/M&MI/IrrVI-1/2004, dated:01.09.2004.
2. Govt.,Memo.No.4495/Maj.Irr.II/A1/2007, dated:02.11.2007.
3. Govt.,Memo.No.20815/C.A.III.1/2011, dated:02.02.2012.
4. Govt.,Memo.No.20815/C.A.III.1/2011, dated:18.02.2014.
5. Judgment of the Prl. District Judge, Krishna District, in A.O.P.No.23/2015, dated:02.06.2016.
6. Opinion of the Government Pleader, Krishna District, L.O.No.45, dated:29.06.2016.
7. Govt., Letter.No.20815/Projects-II/A1/2011,dated:05.10.2016.
8. Govt., Letter.No.20815/Projects.II/2011, dated:30.05.2017.
9. From the Learned Advocate General opinion No.57/2016 dated:06.06.2017.
10. The Interim orders of the X Additional District judge Krishna, Machilipatnam in E.P.No.420/2017 in A.O.P No.23/2015, dated:24.09.2018
11. Govt.,Memo.No.20815/Projects.II/A1/2011, dated:30.10.2018.
12. The Interim orders of the Hon'ble High Court in IA No.2 of 2018 in CMA No.1141 of 2018, dated:23.11.2018.
13. From the Learned Advocate General Lr.No.409/2018, dated:23.11.2018.
14. Govt., Memo.No.20815/Projects.II/A1/2011, dated:14.12.2018.
15. From the CE, KDS, Vijayawada letter No.CE/KDS/ VJA/O.T.1/ AEE-1/PP Arbitration/4209 & 4211, dated:22.12.2018.

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ORDER:

In the reference 1st read above, orders were issued entrusting the construction of work of Pulichintala Project and its ancillary works to M/s SCL-CR18G Joint Venture, Hyderabad. In reference 2nd read above, the Government accepted the decisions of Dispute Adjudication Board (DAB)-I passed on 31.01.2007 and the amount was paid.

2) The agency raised 28 Number of claims and requested to resolve the claims by way of constituting DAB-II. Accordingly DAB-II was constituted on 13.05.2011 and the DAB-II pronounced award on 09.01.2012. In reference 3rd read above, the Government expressed dissatisfaction on the award of DAB-II. On the decision of the Government, the Superintending Engineer has constituted the Arbitral Tribunal with three members. The Arbitral Tribunal passed award on 03.10.2013.

3) The Superintending Engineer, Pulichintala Project Circle, Jaggiahpet filed an appeal in 2nd Additional District Court, Vijayawada on 27.12.2013 to set aside the Majority award under section 34 of Arbitration and Conciliation Act, 1996 and later the case was transferred to the Hon'ble Court of Principal District Judge Krishna, Machilipatnam.

4) In the meanwhile, in reference 4th read above, Government have permitted the Chief Engineer, Krishna Delta System, Vijayawada to implement the Majority award passed by Arbitral Tribunal in respect of Pulichintala Project with a reduction of an amount of Rs.10.00 Crores as accepted by the agency.

5) In the reference 5th read above, the Hon'ble Principal District Judge Krishna, Machilipatnam dismissed the writ appeal filed by the Department and pronounced the judgment on 02.06.2016 for implementation of the Majority Arbitral award.

6) In reference 6th read above, the Government Pleader, Machilipatnam who represented the case at Machilipatnam opined that there are no good grounds for filing an appeal against the judgment dated:02.06.2016.

7) In the references 7th and 8th read above, the Government have requested the learned Advocate General for his considered opinion/advise, as this is serious matter involving many legal matters, valued at a few hundred Crores. In the reference 9th read above, the Learned Advocate General has offered his considered opinion that if the said Memo is issued by following the A.P. Government Business Rules by a person competent to do so under the said Rules granting it the sanctity of binding nature, it would have been a different scenario, otherwise it is a case for preferring an appeal.

8) Meanwhile, the EPC agency filed Executive Petition (EP) No.420/2017 on the file of the X Additional District Judge Krishna, Machilipatnam to attach the schedule properties and to sell the same by conducting public auction in court for realization of the award amount.

9) In reference 10th read above, the X Additional District Judge Krishna, Machilipatnam in E.P.No.420/2017 in A.O.P No.23/2015 allowed the Executive Petition and DHR is entitled to proclaim and sell the Items No.1 & 2 of EP schedule properties for realization of EP amount together with interest and costs.

10) In reference 11th read above, the Government has requested the Chief Engineer, Krishna Delta System, Vijayawada to take immediate necessary action to file an appeal before the Hon'ble High Court of AP against the orders of the X Addl. District Court in Executive Petition No.420/2017 dated:24.09.2018 in consultation with Learned Advocate General.

11) Accordingly, a Civil Miscellaneous Appeal (CMA) bearing No.1141/2018 was filed in Hon'ble High Court of A.P. In reference 12th read above, the Division Bench of the High Court in its interim order in IA No. 2 of 2018 in CMA No.1141/2018, dated:23.11.2018 has held that,

> We have heard the learned Advocate General for the State of Andhra Pradesh appearing for the applicant/appellant and Mr.B.Adinarayana Rao, Senior Counsel appearing for respondent No.1.
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> By a majority of, the Arbitral Tribunal allowed certain claims preferred by respondent No.1. A.O.P. No. 23 of 2015 filed by the applicant under section 34(2) of the Arbitration and Conciliation Act, 1996, was dismissed by the Prl. District Judge, Krishna at Machilipatnam on 02.06.2016. Feeling aggrieved by the said order and decree, the applicant filed the present appeal.
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> Considering the fact that respondent No.1 has succeeded before the two fora and so far, it has not received any part of the amount awarded by the Arbitrators and the further fact that the award results in huge expenditure of public money, we are inclined to balance interests of both parties. Accordingly, there shall be stay as prayed for, subject to the applicant/ appellant depositing to the credit of A.O.P No.23 of 2013 on the file of the

Principal District Judge, Krishna, Machilipatnam, 50% of the amount awarded by the Arbitral Tribunal along with interest accrued thereon as on date within six weeks from today. On such deposit, respondent No.1 is permitted to withdraw the same without furnishing any security."

12) In reference 13th read above, the Advocate General has informed that the Hon'ble Court while condoning the delay in re-presenting the CMA granted stay on condition of depositing the 50% of the decretal amount with interest within the six weeks from today. (i.e., date of interim orders of Hon'ble High Court).

13) In reference 14th read above, the Chief Engineer, Krishna Delta System, Vijayawada was requested to examine the interim orders of the Hon'ble High Court and furnish his detailed report to Government within the stipulated period.

14) In reference 15th read above, while stating among other things the Chief Engineer, Krishna Delta System, Vijayawada has requested the Government to sanction and release an amount of **Rs.199,67,12,165/-** (Rupees One Ninety Nine Crore Sixty Seven Lakh Twelve Thousand One hundred and Sixty Five only) i.e., 50% of Arbitral amount along with interest accrued as on 23.11.2018 and also permit the Executive Engineer, Pulichintala Project Division No.2, Jaggaiahpet to deposit the above said amount on the file of the A.O.P.No.23 of 2015 Principal District court Krishna, Machilipatnam in accordance to the Hon'ble High Court Orders in CMA No.1141/2018 on or before 03.01.2019 on the subject case under the Head of Account 4700-01-128-11-26-530/531.

15) The Government after careful examination of the proposal, hereby sanction for an amount of **Rs.199,67,12,165/-** (Rupees One Ninety Nine Crore Sixty Seven Lakh Twelve Thousand One hundred and Sixty Five only) i.e., 50% of Arbitral amount along with interest accrued as on 23.11.2018 on the file of the A.O.P No.23 of 2015 Principal District Court Krishna, Machilipatnam in accordance to the Hon'ble High Court Orders in IA No.2 of 2018 in CMA No.1141/2018, dated:23.11.2018 on or before 03.01.2019 on the subject case.

16) The Chief Engineer, Krishna Delta System, Vijayawada is directed to permit the Executive Engineer, Pulichintala Project Division No.2, Jaggaiahpet to deposit the above said amount in the Hon'ble Court on the subject case.

17) The above expenditure is debitable under Head of Account "4700 Capital Outlay on Major Irrigation -01 Major Irrigation - Commercial - M.H.128 Pulichintala Project (Dr.K.L.Rao Sagar Project) - G.H.11 State Development Schemes – S.H (26) Dam and Appurtenant works - 530 Major works- 531 Other Expenditure".

18) The Chief Engineer, Krishna Delta System, Vijayawada shall take necessary action in the matter.

19) This order issues with the concurrence of Finance (FMU-W.R.II) Department, vide their U.O.No.48022/359/FMU.WR.II/2016 (Computer No.114444), dated:16.01.2019.

(BY ORDER AND IN THE NAME OF THE GOVERNOR OF ANDHRA PRADESH)

SHASHI BHUSHAN KUMAR
SECRETARY TO GOVERNMENT

To:
The Chief Engineer, Krishna Delta System, Vijayawada.
Copy to:
The P.S to Principal Secretary to Hon'ble CM.

The P.S to Hon'ble Minister (WRD).
The P.S to Secretary to Govt., (WRD).
The Accountant General, A.P. Hyderabad.
The Director of Works and Accounts, Ibrahimpatnam, Vijayawada.
The Finance (FMU-W.R.II) Department.
Sf/Sc.

// FORWARDED::BY ORDER //

SECTION OFFICER